

June 22, 2007

Herman Gilman
Senior Field Representative
Washington Federation of State Employees
444 NE Ravenna Blvd. Ste. 108
Seattle, WA 98115

RE: David Bortz, Gale Allen, Rich Scrivner and Rodney Rennie v. Department of Natural Resources
Allocation Review No. ALLO-06-007

Dear Mr. Gilman:

On May 17, 2007, I conducted a Director's review meeting at the Department of Personnel, 2828 Capitol Boulevard, Olympia, Washington, concerning the allocation of the positions held by David Bortz, Gale Allen, Rich Scrivner and Rodney Rennie. Present at the Director's review meeting were you, Mr. Bortz, Mr. Allen, and Mr. Rennie. Also present were Thomas Hoffer, Senior Human Resources Consultant, and Marty Graf, Senior Human Resources Consultant, representing the Department of Natural Resources (DNR). During the course of the meeting, I requested additional information from the employees to address whether their program was state-mandated. The additional information was provided on May 25, 2007. (Exhibit H). As discussed during the meeting, I provided the agency an opportunity to review the additional information and provide a response. The agency's response was provided on June 12, 2007. (Exhibit I).

Background

The employees have been seeking a salary adjustment for their positions since 2005. In August 2005, they submitted salary survey information to DNR management asking that their specialized training and expertise in real estate matters be recognized by reclassifying their positions to a classification used for similar positions in the Department of Transportation. (Exhibit A-4). DNR management and budget staff reviewed funding for the request. In the meantime, because it appeared that funding for the request would be approved, on December 16, 2005, the employees submitted updated Position Description Forms (PDF) to DNR's human resources office. In their PDFs, the employees proposed that their positions be reallocated to the Property and Acquisition Specialist 6 classification. (Exhibits A-6-9). The employees understood that the reallocation of their positions to the Property and Acquisition Specialist 6 classification was a "done deal." Subsequently, on January 12, 2006, the funding request

received final approval and the Authorization for Position Establishment/Reallocation budget form was submitted to DNR's human resources office. (Exhibit A-3).

On January 1, 2006, the Department of Personnel established the new Property, Acquisition and Appraisal Occupational Category. The category includes the Property and Acquisition Specialist 1-6 classifications. As a result of the adoption of the new category and the employees' request for reallocation, Marty Graff, Senior Human Resources Consultant for DNR, reviewed the employees' positions for reallocation to the Property and Acquisition Specialist 5 classification. By letter dated June 28, 2006, Mr. Graff denied reallocation of the employees' positions and determined that their positions were properly allocated to the Property and Acquisition Specialist 4 classification. (Exhibit A-1&2). On July 26, 2006, the employees requested a Director's review of DNR's determination. (Exhibit A).

On September 19, 2006, Thomas Hoffer, Senior Human Resources Consultant for DNR, submitted a written response to the request for review. (Exhibit B). On April 27, 2007, the employees submitted written support for their request. (Exhibit C).

I reviewed all the documents filed and at the outset of the Director's review meeting, we discussed the intent of the civil service reform occupational category concept and the purpose of the allocation review process. I confirmed that as part of the civil service reform, a phased plan was used by the Department of Personnel to implement changes to the classification plan. The Property, Acquisition and Appraisal Occupational Category was not a "fully merged" category in that it did not align with the 4-level dual-track structure intended for fully merged categories. (See the Department of Personnel's January 2005 Washington State Classification and Pay Administrative Guide). I also confirmed the purpose of an allocation review and stated that salary inequity is not an allocating criterion.

The purpose of a position review is to determine which classification best describes the overall duties and responsibilities of a position. A position review is neither a measurement of the volume of work performed, nor an evaluation of the expertise with which that work is performed. A position review is a comparison of the duties and responsibilities of a particular position to the available classification specifications. This review results in a determination of the class that best describes the overall duties and responsibilities of the position. See Liddle-Stamper v. Washington State University, PAB Case No. 3722-A2 (1994).

Salary inequity is not an allocation criterion and should not be considered when determining the appropriate allocation of position. See Sorensen v. Dept's Of Social and Health Services and Personnel, PAB Case No. A94-020 (1995).

In accordance with the Classification and Pay Administrative Guide, the following standards apply in allocating positions to interim-phase categories:

- a) Category concept.
- b) Category concept of related occupational categories.
- c) Distinguishing characteristics of a class.
- d) Distinguishing characteristics of other classes in the occupations category.
- e) Class level definitions for the fully merged four-level categories do not apply.

Summary of Employees' Perspective

In summary, the employees believe that their positions in the Real Estate Group (REG) should be reallocated to the Property and Acquisition Specialist 6 level because:

- The request was previously approved and authorized, they were told that their pay increase would be in their next checks, and they relied on the representations of management that they would be reallocated;
- The supervisory requirement for the Property and Acquisition Specialist 6 level should be viewed as optional because some of the positions that cross-walked into that level were not supervisory positions;
- The Property and Acquisition Specialist 6 level should be viewed as a "dual-track" classification in which supervisory responsibilities would be one track and specialization in complex subject matter would be another;
- In a report to the legislature, the employees have been recognized for their expertise, experience and qualifications in providing comprehensive and expert real estate portfolio management including, commercial/industrial lease negotiations, urban land use/community planning legal and transactional strategies, building/engineering design and property entitlements/enhancements.

In addition, the employees assert that their program is part of the state-mandated Transition Lands Program created by the Transition Lands Act (SSHB 181) of 1984 and that in accordance with Article XVI of the Constitution of the State of Washington, staff working with the disposition of public trust lands must be professionals/experts in their field.

Summary of DNR's Reasoning

In summary, DNR argues that the Property, Acquisition and Appraisal Occupational Category is not full-merged; therefore, the concept of dual-track and permissive supervisory responsibility do not apply. DNR asserts that the Property and Acquisition Specialist 6 level requires supervisory responsibilities and because the employees do not supervise property tax auditors, appraisers, or other staff, they do not fit within this classification.

In addition, DNR argues that the employees' positions do not fit within the Property and Acquisition Specialist 5 classification. DNR contends that the employees do not have supervisory responsibilities and do not operate under the Uniform Relocation Act which is required for allocation to the Property and Acquisition Specialist 5 level. DNR also contends that neither Article XVI of the State Constitution nor the Transition Lands Act established the employees' area of responsibility as a state-mandated program. Rather, DNR asserts that the State Constitution does not speak to the commercial land program or the development of urban lands and that the Transition Lands Act simply provides DNR with the flexibility to manage its land portfolio for the best interests of the trusts. DNR asserts that REG is not a state-mandated program, the employees' areas of responsibility are not considered most complex or critical, and they have not been designated as technical experts for a state-mandated programs, therefore, their positions do not fit within the Property and Acquisition Specialist 5 classification.

DNR contends that positions allocated to the Property and Acquisition Specialist 4 level perform specialized and complex duties in commercial real estate, management, appraisals, audits, and/or land pricing and funding and that these positions use advanced technical knowledge when planning and conducting complex tasks for large-scale projects or programs. DNR argues that the employees' positions fit within this scope and level of work and therefore, the Property and Acquisition Specialist 4 level is the appropriate classification for their positions.

Director's Determination

As the Director's designee, I carefully reviewed all of the documentation in the file, considered the clarifying information the parties provided during the review meeting, and reviewed and considered the additional information the parties submitted at my request. Based on my review of the documents, the available classifications, and my analysis of the employees' assigned duties, level responsibilities and scope of work, I conclude that their positions are properly allocated to the Property and Acquisition Specialist 4 classification.

Rationale for Determination

The parties agree that the employees' positions fit within the Occupational Category Concept for the Property, Acquisition and Appraisal category. The Occupational Concept states: "[p]ositions in this category perform a variety of specialized activities in real or personal property that include, but not limited to, the following: real or personal property appraisals and/or audits, property management, negotiations, relocation, title examination, acquisition, leasing, valuation, and/or project management. Some positions administer a statewide program such as a senior tax deferral or public utility district privilege tax or serve as a technical expert in the development and implementation of various state and/or federal programs."

The question is which level of classification within this category best fits the overall duties and level of responsibility assigned to the employees' positions.

The Distinguishing Characteristics for the Property and Acquisition Specialist 6 state:

Positions supervise property tax auditors and/or appraisers, or other property tax staff involved in state-mandated programs such as the statewide ratio study, revaluation, county review, property tax exemptions and deferrals, education, Board of Equalization administration, levy administration and financial and/or valuation analysis in the areas of utilities, real property, and personal property. Some positions supervise lands agents and habitat technicians involved in developing, coordinating, and monitoring property acquisition, appraisal, and property management activities. These positions also manage public access areas. (Emphasis added.)

The Property and Acquisition Specialist 6 does not contain dual-track language that allows non-supervisory positions to be allocated to this level. Rather, supervision of staff is required for allocation to this level. In this case, the employees do not have supervisory responsibilities. Therefore, they do not meet the Distinguishing Characteristics for the Property and Acquisition Specialist 6 classification.

The Distinguishing Characteristics for the Property and Acquisition Specialist 5 state:

Under the Uniform Relocation Act, positions supervise or lead employees in real estate activities such as property management, relocation, appraisal, negotiations, or title examination or positions may serve as a review appraiser for multi-regions. Some positions provide technical expertise in state-mandated programs such as the statewide ratio study, revaluation, county review, property tax exemptions and deferrals, education, levy administration, or financial and/or valuation analysis in the areas of utilities, real property, and personal property.

The employees' positions do not meet the first component of this level because they do not work under the Uniform Relocation Act. Therefore, the question is whether they provide technical expertise in a state-mandated program.

DNR manages over three million acres of trust land for the support of various public institutions. The agency is charged with managing the land to sustain the quality of the resources to provide revenue without shortchanging future opportunities. The Transition Lands Act (SSHB 181) was passed in 1984. The act gave DNR limited additional flexibility to manage its land portfolio for the best interests of the trusts. The Transition Lands Policy Plan states "[c]hanges in land use patterns, the needs of the trusts (particularly Common Schools) for more predictable and higher level of support, and the increased flexibility provided by the 1984 Legislature were major factors in the department's decision to develop a Transition Lands Program." (Emphasis added.) (See pages 5 and 6 of the Transition Lands Policy Plan, Exhibit H-1). The employees are responsible for managing commercial land portfolios for the Commercial Real Estate Program within the Transition Lands Program. The Transition Lands Program was not established by the State Constitution or by the Transition Lands Act. Rather it was established by DNR in order to carry out the mandates of the State Constitution, the Transition Lands Act and other statutes such as Title 79.10 RCW. The employees' positions do not require them to provide technical expertise in a state-mandated program; therefore, they do not meet the second component of the Distinguishing Characteristics.

The Distinguishing Characteristics for the Property and Acquisition Specialist 4 state:

Under limited supervision, positions perform specialized and complex duties in real estate services, project management, appraisals, audits, and/or land pricing and funding.

In an assigned area of responsibility, positions apply advanced technical knowledge when planning and conducting complex tasks for large-scale projects or programs such as consolidating or co-locating state offices that are 100,000 square feet or more; conducting real estate acquisitions requiring review, analyses, and alternatives; negotiating and concluding land transactions and exchanges for purchase, lease, or rental; conducting appraisals and/or audits of major utilities or large and diversified manufacturing and industrial properties where built in components constitutes a large part of the total property value;

determining the tax status of major non-profit organizations; and/or determining funds for acquisition, purchase or lease.

Within the Commercial Real Estate Program, the employees perform specialized, complex tasks requiring advanced technical knowledge in order to provide comprehensive and professional real estate portfolio management. They work under the direction of the Assistance Division Manager. As summarized in their PDFs, they implement and manage the statewide urban and transition lands program, including: predevelopment actions, marketing and selling or exchanging state trust lands, acquiring commercial and industrial real estate investments, and managing the assets. They are responsible for all aspects of negotiations involving complex commercial real estate leases, purchases and/or exchange agreements and other contracts and licenses pertaining to the management of the agency's real estate portfolio. These duties and responsibilities are included in the Distinguishing Characteristics of the Property and Acquisition Specialist 4. The employees' positions are properly allocated.

Appeal Rights

WAC 357-49-018 provides that either party may appeal the results of the Director's review to the Personnel Resources Board by filing written exceptions to the Directors' determination in accordance with Chapter 357-52 WAC.

WAC 357-52-015 states that an appeal must be received in writing at the office of the Board within thirty (30) calendar days after service of the Directors' determination. The address for the Personnel Resources Board is 2828 Capitol Blvd., P.O. Box 40911, Olympia, Washington, 98504-0911.

If no further action is taken, the Director's determination becomes final.

Sincerely,

Holly Platz, SPHR
Director's Review Investigator

cc: Thomas Hoffer, Human Resource Consultant, DNR
David Bortz
Gale Allen
Rich Scrivner
Rodney Rennie
Lisa Skriletz, DOP

List of Exhibits for Bortz et. al. ALLO-06-007

- A. July 25, 2006 letter of appeal, received July 26, 2006, with attachments:
 - 1. June 28, 2006 letter to David Bortz from Marty Graf, Senior Human Resources Consultant
 - 2. June 28, 2006 letter to Rodney Rennie from Marty Graf, Senior Human Resources Consultant Letter
 - 3. Authorization for Position Establishment/Reallocation for position 602-1370 with request date of 12-16-05
 - 4. Proposal to DNR Management Justification for Salary Adjustment Real Estate Group Members dated August 18, 2005 and salary survey information
 - 5. Land Management and Product Sales and Leasing Divisions – Position Request Tracking Form Version 3 December 2005
 - 6. Position Description Form for Gale Allen dated December 16, 2005
 - 7. Position Description Form for Rodney Renni dated December 16, 2005
 - 8. Position Description Form for Richard Scrivner dated December 16, 2005
 - 9. Position Description Form for David Bortz dated December 16, 2005
 - 10. Civil Service Reform Fact Sheet – Classification, dated February 2005
 - 11. Frequently Asked Questions – Classification from DOP website printed July 20, 2006
 - 12. Pages 6, 7, 8 and 9 of the Washington State Classification and Pay Administrative Guide dated January 2005
 - 13. Occupational Category for Property, Acquisition, and Appraisal
- B. September 18, 2006 letter to Karen Wilcox from Thomas A. Hoffer, Senior Human Resources Consultant in response to allocation issue
- C. Presentation of Pertinent Facts by Appellants Gale Allen, David Bortz, Rod Rennie and Rich Scrivner, for Director's Review, Department of Personnel, May 17, 2007, with attached exhibits
 - Exhibit A: Civil Service Reform Fact Sheet – Classification, dated February 2005 (duplicate of A-10)
 - Exhibit B: Proposal to DNR Management Justification for Salary Adjustment Real Estate Group Members dated August 18, 2005 and salary survey information (duplicate of A-4)
 - Exhibit C: Authorization for Position Establishment/Reallocation for position 602-1370 with request date of 12-16-05 (duplicate of A-3)
 - Exhibit D: Position Description Forms (duplicates of A- 6, 7, 8 and 9)
 - Exhibit E: June 28, 2006 letter to Rodney Rennie from Marty Graf, Senior Human Resources Consultant (duplicate of A-2)
 - Exhibit F: Qualification of Personnel Managing and Operating the Program, page numbers 34, 35, and 36 (portion of report to the Legislature by the State Investment Board)
 - Exhibit G: April 3, 2007 letter to Rodney Rennie from Robert Ratliffe and March 23, 2007 letter to Rodney Rennie from Cory Carlson
- D. Occupational Category for Property, Acquisition, and Appraisal (duplicate of A-13)

- E. May 17, 2007 Department of Personnel Director's Review Meeting written briefing provided by employees
- F. Examples of work provided by employees during the May 17, 2007 review meeting:
 - 1. March 16, 2004 memo re: Lease Agreement – Swedish Health Services
 - 2. January 23, 1997 memo re: Lease Agreement – Circuit City Stores, Inc.
- G. Notebook provided by employees during the May 17, 2007, review meeting – Commercial Real Estate Program
- H. Additional documentation provided by employees as requested during the Director's review meeting
 - 1. Brochure entitled Trust Land Transactions – Sustaining Washington's Endowment of Trust Lands
 - 2. Transition Lands Policy Plan
 - 3. Article XVI of the Constitution of the State of Washington
- I. DNR's response to the additional information submitted by employees
 - 1. Letter dated June 12, 2007 from Thomas Hoffer to Holly Platz
 - 2. Letter dated September 18, 2006 from Thomas Hoffer to Karen Wilcox (duplicate of B)
 - 3. Property, Acquisitions, and Appraisal Occupational Category DNR Guidance